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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36240-2024
Date of decision : 02.08.2024

Pawan Kumar
.....Petitioner

versus

State of Haryana
..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Shweta Bawa, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, A.A.G., Haryana.

RAJESH BHARDWAJ, J. (Oral)

Present petition has been filed by the petitioner under Section 439 Cr.P.C. praying for grant of regular bail in case FIR No.361 dated 14.04.2024, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Palla, Faridabad.

Adumbrated facts of the case are that a secret information was received by the Police that one Raju Thakur was involved in selling the narcotics substances, Ganja, and he was coming from Badarpur Delhi in Auto Rickshaw and if a Nakka is laid, he could be caught with contraband on the spot. Finding the information reliable, the SHO sent a notice under Section 42 of NDPS Act and the police party laid the Barricade. The person coming with a polythene bag was spotted and he was apprehended. A polythene bag was being carried by him and on asking, he disclosed his name as Raju Thakur. After giving a notice under Section 50 of the NDPS Act, search was conducted and Ganja weighing 1

kg 135 gm. was found in the polythene bag. Raju Thakur having failed to produce any licence for possession of these intoxicants, was arrested and FIR was registered against him. During investigation, he disclosed about name of present petitioner that he had purchased the contraband from Pawan Kumar, i.e. present petitioner. Thus, he was also arrayed as an accused and was arrested on 16.04.2024 and since then he is behind bars. Thereafter, the petitioner approached the Court of Additional Sessions Judge, Faridabad for grant of bail, however, after hearing both the sides, the same was declined by the Additional Sessions Judge, Faridabad vide order dated 09.07.2024. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in the present case. She submits that neither name of the petitioner was mentioned in the secret information nor any recovery was effected from him. She submits that it is on the basis of disclosure statement of the co-accused, the petitioner has been arrayed as an accused in the present case and which is not an admissible evidence. She submits that even otherwise the contraband recovered from the co-accused weighing 1 kg 135 gm of Ganja, is a non-commercial quantity and thus, the provisions of Section 37 of NDPS Act are not attracted. She submits that on the very next date of registration of the present FIR, the petitioner was falsely implicated in another FIR, however, he is released on bail in the same. She submits that in the facts and circumstances of the present case, petitioner deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner and on instructions from

SI Naresh has submitted that the name of the petitioner was specifically disclosed by the co-accused that the contraband was supplied by him, however, he submits that the co-accused, namely, Raju Thakur is released on bail. Further he submits that the investigation in the present case is complete and challan has already been presented.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the name of the petitioner is surfaced in the present case on the basis of disclosure statement of co-accused from whom the contraband, Ganja weighing 1 kg 135 gm was recovered which is a non-commercial quantity. On the very next day, another FIR was registered against the petitioner and he was arrested in another FIR. However, it is apparent that in the present case the petitioner was arrayed as an accused on the basis of disclosure statement made by co-accused. Investigation already stands complete and the contraband recovered from the co-accused is a non-commercial quantity.

In view of the facts and circumstances of the present case, this Court cannot ignore the fact that the speedy trial is the fundamental right of every accused. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260**, this Court is of the opinion that the case of the petitioner is covered by the ratio laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special

conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. xxxxx

21.it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

22. xxxxx

23. *There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.*

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and

circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

02.08.2024
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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No